

Blumberg & Wolk, LLC
158 Delaware Street
P.O. Box 68
Woodbury, NJ 08096
(856) 848-7472

Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419
Docket No. 1:13-md-2419 (RWZ)

**PREMIER ORTHOPAEDIC ASSOCIATES, ET AL'S JOINDER AND MOTION TO
AMEND AND CERTIFY ORDER FOR INTERLOCUTORY APPEAL**

Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D. (collectively, "Premier Defendants") hereby join the Tennessee Clinic Defendants and move the Court pursuant to 28 U.S.C. § 1292(b) and Fed. R. App. P. 5(a)(3), as follows:

1. To amend the October 7, 2015 Order (Docket No. 2309) so as to include the necessary language from 28 U.S.C. § 1292(b) which will allow the Premier Defendants to petition the First Circuit for an appeal of:
 - a. The Court's ruling that "related to" jurisdiction exists, and;
 - b. The Court's ruling that it will remand these cases to Tennessee pursuant to 28 U.S.C. § 1407, then reacquire jurisdiction via 28 U.S.C. § 157(b)(5) and subsequently try these cases in Massachusetts.

A "controlling question of law as to which there is substantial ground for difference of opinion" exists as to this issue, demonstrated by the prior briefing submitted to the Court on this matter. 28 U.S.C. § 1292(b). "An immediate appeal from this order may materially advance the ultimate termination of the litigation" by providing a settled decision on trial venue. 28 U.S.C. § 1292(b). Accordingly, Certification of the Court's October 7, 2015 Order is appropriate.

Furthermore, the Premier Defendants are interested in and materially affected by the Court's decision on this matter, as all the Court's determinations on how to procedurally deal with the Tennessee Defendants will become the guiding law of the case as to how to procedurally deal with the Premier Defendants at a slightly later date.

For the reasons set forth in the Premier Defendants concurrently-filed Memorandum of Law in Support of the Premier Defendants' Joinder and Motion to Amend and Certify Order for Interlocutory Appeal, the Premier Defendants respectfully request that the Court enter an Amended Order certifying Docket No. 2309 for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

Dated: November 16, 2015

Respectfully submitted,

Blumberg & Wolk, LLC
158 Delaware Street
P.O. Box 68
Woodbury New Jersey 08096
(856) 848-7472
cwolk@blumberglawoffices.com

/s/ Christopher M. Wolk
Christopher M. Wolk, Esq.

*Attorneys for Premier Orthopaedic and Sports
Medicine Associates of Southern New Jersey, LLC,
trading as Premier Orthopaedic Associates,
Premier Orthopaedic Associates Surgical Center,
LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly
Yvette Smith-Martin, M.D., Thomas Dwyer, M.D.,
Richard C. DiVerniero, M.D., and Richard Strauss,
M.D.*

CERTIFICATION

I certify that in submitting this *MOTION*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: November 16, 2015

/s/ Christopher M. Wolk
Christopher M. Wolk, Esq.